

REMARKS

Claims 1-26 remain pending in the present application. Claims 22-26 are new. Basis for the amendments can be found throughout the specification, claims and drawings as originally filed.

New Claims

New Claims 22-26 are similar to the claims 48-52 that are pending in Applicant's reissue application Serial No. 08/619,394. The pending claims 48-25 of that application have been amended to overcome the 35 U.S.C. § 112 rejections. Because this application claims priority back to the patent for which reissue is being sought, Applicant has decided to include them in this application rather than continue with the reissue.

Regarding the rejection under 35 U.S.C. § 102 and 103, these claims were rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Viazanko. The Examiner has stated that Viazanko discloses a saw with every structural limitation of the claimed invention including a base; a saw blade; a table; and an adjustable fence assembly including a first fixed fence portion; a movable fence portion and a second fixed fence portion integral with the first fixed fence portion, wherein the claimed second distance is greater than the claimed first distance (it is shown to be slightly greater in Figure 2).

Applicant respectfully disagrees with the Examiner. While the total height of the movable fence is shown slightly larger than the fixed fence, the claim defines the planar workpiece supporting surface as being larger, and in Viazanko, the planar workpiece supporting surface of the movable fence is clearly shorter than the fixed fence. The Examiner then states that if the applicant makes this argument it is the Examiner's position that it would be obvious since Applicant has not stated that having these fence portions at specific relative heights is for any particular purpose. Applicant respectfully disagrees with the Examiner on this point also. In the last amendment filed in the reissue application, Applicant explained how this feature (the relative specific heights) allows for the adjustment of the fence during mixer and bevel cuts

while still providing the largest amount of support for the workpiece. As shown in Figure 6, when the saw is positioned for bevel cuts, the fixed fence needs to be short to allow for the angulation of the cutting blade. While the fixed fence could be increased in height, this would reduce the amount of support available during a miter cut as shown in Figure 5. Because of the relative heights of the fixed and movable fences, adequate support is provided for both miter and bevel cuts. The need for this height relationship is not an issue in Viazanko since Viazanko is not trying to solve the same problem as is the present invention. Since Viazanko does not adjust for bevel cuts and only adjusts for miter cuts, the problem addressed by the present invention is not recognized by Viazanko.

In the case of In re Horn, 203 U.S.P.Q. 969 (C.C.P.A. 1979), Judge Watson clearly articulated the well-known standard for combining references under 35 U.S.C. § 103. Judge Watson stated that: "... there must be some basis for concluding that the reference would be considered by one skilled in the particular art working on the pertinent problem to which the invention pertains." 203 U.S.P.Q. at 971 (emphasis added). Thus, when looking to solve the problem associated with bevel and miter cuts, one skilled in the art would not consider a reference which shows only miter cutting because it does not have the same problems to overcome.

The Examiner further takes official notice that it is old and well known in the art to provide fences of various heights for various reasons. Certainly, if this is as old and well known as believed by the Examiner, it should not be difficult for the Examiner to identify at least one reference which at least illustrates a compound miter saw having a fence with the defined proportions. Absent the identification of at least one reference disclosing this old and well known feature, Applicant respectfully requests the Examiner to withdraw the rejection.

In light of the above amendments and remarks, Applicant would submit that all Claims are in a condition for allowance and thus Applicant requests that the Examiner pass the case to issue at his earliest possible convenience.

